



TICKET TO WORK & WORK INCENTIVES ADVISORY PANEL



December 22, 2005

Jo Anne B. Barnhart, Commissioner
Social Security Administration
Office of Regulations
100 Altmeyer Building
6401 Security Boulevard
Baltimore, MD 21235-6401

RE: Notice of Proposed Rule Making: Amendments to the Ticket to Work and Self-Sufficiency Program (Volume 70, Number 189)

Dear Commissioner Barnhart:

I am writing on behalf of the Ticket to Work and Work Incentives Advisory Panel (the Panel) to provide comments on the Notice of Proposed Rule Making (NPRM) released on September 30, 2005, "Amendments to the Ticket to Work and Self-Sufficiency Program." We want to thank SSA for proposing significant improvements in the program and for accepting several of the priority recommendations the Panel (and others) have made over the past few years. We are particularly pleased that the proposed amendments recognize the multi-step nature of returning to work. Moving toward self-sufficiency is often a dynamic process, and the proposed new Employment Network (EN) payment system recognizes and incorporates this into the program. Overall, we believe that the NPRM is an excellent step in the right direction and is consistent with the Panel's recommendations. Nevertheless, we believe that other urgent steps are needed to ensure the success of the Ticket Program.

The Panel has continued to receive regular updates on Ticket implementation activities from SSA officials. We are heartened to know that SSA has completed its roll out of the Ticket Program and that the program is operational in all 50 states and the U.S. territories. Beneficiaries can attempt to work without the fear of triggering a continuing disability review (CDR).

As of December 2, 2005, SSA has issued over 11.2 million tickets to SSDI and SSI beneficiaries and is currently mailing tickets timely to qualified disability beneficiaries who are newly awarded. However, EN recruitment as well as participation has been a significant challenge,

primarily because service providers believe that the program's payment system does not provide adequate compensation for their total costs of participating. As of December 2, 2005, only 1,366 service providers have enrolled as ENs.

Similarly, of the beneficiaries receiving tickets, less than 1 percent (111,872) have assigned their tickets to a provider, and the overwhelming majority of those beneficiaries have assigned their tickets with a VR agency under the pre-ticket traditional VR reimbursement program. Consequently, there has been limited success in achieving the Ticket Program's goal to provide beneficiaries with a choice of service providers and increasing beneficiaries' efforts to work and become self-sufficient. Finally, the Panel has received various reports and testimony that most beneficiaries are unfamiliar with SSA's work incentives that have been in the program for decades and are also unaware of the new Ticket Program and how it can work. We understand that work incentives can be complex and confusing, in part, because they may be different for Social Security Disability Insurance (SSDI) than for Supplemental Security Income (SSI) beneficiaries.

If the Ticket Program is to succeed, a coordinated marketing and a substantial nationwide public education campaign, targeted to beneficiaries as well as providers, will be needed to increase awareness of and interest in the program. These efforts will also be required to explain the relationship of the Ticket Program to other work incentives to beneficiaries and providers. The Panel recommends that SSA move as quickly as possible toward final regulations that will start the journey to re-invent the Ticket Program. It seems reasonable to assume that the marketing plan and non-regulatory initiatives would coincide with implementation of the new rules.

Our specific comments on the proposed rules are structured as follows: 1) Key Issues Where SSA Has Accepted the Panel's Recommendations; 2) Ticket Eligibility for 16 and 17 Year Olds; 3) Areas of Additional Comments Specifically Requested by SSA; and 4) Closing Remarks.

I. KEY ISSUES WHERE SSA ACCEPTED PANEL'S RECOMMENDATIONS

Section 411.125—Who is eligible to receive a ticket under the Ticket to Work Program?

Under the proposed amendments, all beneficiaries classified with a Medical Improvement Expected (MIE) diary will be eligible for the program. The requirement that they first have had a CDR is removed.

The Panel believes that Ticket Program participation was reduced by excluding beneficiaries who are expected to experience medical improvement. Research strongly supports findings that the longer someone receives cash benefits, the harder it is for them to become self-supporting. In addition, the Panel has heard concern expressed by national leaders from the mental health advocacy community and national organizations representing people with developmental disabilities, that people with long-term mental illness (such as bipolar disorder) and cognitive impairments receive this designation disproportionately, and often with no real indication improvement is likely. Finally, the Panel has heard from the public that, if the designation of the

MIE diary category for CDRs is used to limit a person's access to a benefit, it must be subject to due process review or appeal, which it currently is not. The Panel is pleased that SSA has proposed to eliminate this problematic provision.

EN Payments

Sections 411.500 – 411.581—EN Payment Issues

The inadequate EN payment system has often been cited in Panel and other reports and testimony as the most significant and urgent regulatory problem contributing to the very low EN and beneficiary participation in the Ticket Program.

The proposed regulations significantly revise the payment system for ENs. It is clear that SSA listened to the various recommendations submitted by the Panel and others over the past few years to make payments more frequently and earlier to reduce the financial risk of ENs. In addition to providing for increased EN payments, the Panel is pleased that SSA has proposed equalizing the payment amount for SSI and SSDI beneficiaries.

While the proposed changes seem to be a vast improvement over the current system, it is unclear at this point if they are enough to jump-start participation in the Ticket Program. According to recent testimony before the Panel, many ENs have so totally disengaged themselves from the Ticket Program that they are unaware of the proposed new rules and may not demonstrate any interest until they become final and there is strong evidence of a real turnaround in the program. The Panel will closely monitor implementation of the final regulations and continue to provide input into non-regulatory initiatives such as training for ENs.

In addition, in our review of EN payment issues, we noted that the proposed milestone reimbursement system could result in shifting too much of the Ticket Program's value to the first couple months of employment, thus diminishing the beneficiaries' ability to negotiate for needed service later in their return to work efforts. It appears that under the right scenario an EN could receive up to \$7,000 of their milestone payments within three months and over half of the ticket payments within the first year. This could leave a financial disincentive to continue serving a beneficiary under this example after the first year. We recommend that SSA review the lump sum milestone payment provision to ensure that beneficiaries do not lose this protection.

The proposed lump sum milestone payment provision could result in the unintended consequence of financially incentivizing State VR to choose the less challenging milestone payment system over the more demanding cost reimbursement payment system. This could have long-term implications for the relationship between ENs and VR. We have learned from the initial regulations that the financial interplay between the State VR system and the EN network is vital to the success of the Ticket Program.

Another issue that the Panel wants to highlight involves the feasibility of permitting a beneficiary to be his/her own EN. Our understanding is that currently, SSA policy permits micro-boards, family members and other so called "non-traditional providers" to qualify as ENs. The Panel recommends, as did the Adequacy of Incentives Advisory Group in their September 2004 Final report, that SSA consider the feasibility of permitting the beneficiary to be his/her own EN.

VR/EN/Beneficiary Issues

Sections 411.582; 411.585; 411.587—VR, EN, and Beneficiary Issues

The Panel is pleased that SSA has accepted the Panel's recommendations to rewrite the regulations and modify transmittal 17 to make it clear that:

- A SSA beneficiary with a ticket who applies for State VR services has a choice in deciding to assign his/her ticket to the State VR agency, to assign it to another EN, or not to assign it at all. Eligibility for VR services and VR client status should not dictate when or where a beneficiary can use their ticket.
- ENs can receive payments from SSA with respect to the same ticket once VR has been paid under the traditional cost reimbursement system.

II. TICKET ELIGIBILITY FOR 16 AND 17 YEAR OLDS

The proposed amendments do not revise eligibility for beneficiaries who are age 16 and 17.

While the Panel thanks SSA for implementing the Youth Transition Demonstration project and issuing a final regulation on Section 301 this past June, the Panel understands that up to 45% of youth receiving disability benefits do not have an Individual Education Program (IEP), preventing them from benefiting from Section 301 regulation protections. The Panel urges SSA—in cooperation with the Office of Special Education and Rehabilitative Services and other related entities within the Department of Education—to address this gap.

The Panel notes, however, that IEPs may not be appropriate for all youth. For example, many youth with mobility impairments can access the supports they need under Section 504 of the Rehabilitation Act of 1973. Moreover, an IEP does not necessarily include quality goals and objectives that will lead to adult success. While IEPs have been a required mandate for tracking goals and objectives and ensuring special education, related and transition services, the individualized nature of the document means that it varies greatly from student to student.

The Panel also recommends that SSA convene a cross-federal agency task force on transition to develop a unified school-to-work system that removes conflicting incentives.

The Panel supports a legislative extension of SSA's authority to begin new demonstration projects, which expired on December 18, 2005. We urge SSA to use their demonstration authority to establish more youth transition demonstration projects to evaluate the potential long-term savings that could be realized by transitioning youth into gainful employment opportunities early in their life rather than create a long-term dependency on SSA disability programs. The Panel is eager to work with SSA on developing more demonstration projects in this area in order to gather hard facts and eventually make the Ticket Program an option for appropriate sixteen and seventeen year old youths.

The Panel notes that Section 301 regulation protection alone does not fully prepare transition-aged youth for adult living, learning, and earning. As SSA considers a comprehensive approach

to supporting the transition from school to work, it should consider that overlapping and conflicting regulations and services hamper the transition process of youth with disabilities. A comprehensive school-to-work transition effort is going to require the coordinated effort of more than just SSA.

In addition, the Panel reminds SSA that the traditional cost reimbursement program provides a vehicle by which transition-age youth can access vocational rehabilitation and employment services and supports they need. We encourage SSA to begin a dialogue with State VR agencies regarding their youth-in-school policies already available to their youth.

III. AREAS OF ADDITIONAL COMMENTS SPECIFICALLY REQUESTED BY SSA

Eligibility for More than One Ticket

Many beneficiaries using the Ticket program are likely to go in and out of work and not transition at first attempt from receipt of cash benefits to 60 months of continuous employment. Examples include people with cyclical disabilities or episodic incidences of increased impairment, such as among beneficiaries with Multiple Sclerosis.

A beneficiary whose ticket is partially used and needs other continuing support services may have a difficult time finding an EN willing to work with them. For example, a beneficiary returns to cash benefits after a work stoppage under the expedited reinstatement provision of the Ticket to Work and Work Incentives Improvement Act. The person wants to return to work again and decides he/she needs support services. This consumer will be at a distinct disadvantage if interested in continuing to work. In addition, there may well be unassessed cash savings to SSA programs in allowing more than one ticket to a beneficiary, as warranted or appropriate.

The Panel agrees with SSA's example (beneficiaries requiring indefinitely specialized transportation services to and from their worksite) should have access to more than one ticket. The Panel recommends that beneficiaries should be eligible for more than one ticket in a period of entitlement for SSDI or SSI benefits when their disability is likely to require some indefinite supports to remain employed (including self-employment).

Definition of Using a Ticket for the Purpose of CDR Protection (i.e., Timely Progress Issue)

Beneficiaries "using a ticket" are protected from having a CDR. This provision is designed to address the concern of some beneficiaries that working may trigger a CDR and termination of benefits. The beneficiary must be making "timely progress" toward self-supporting employment to maintain this protection. Timely progress toward self-supporting employment, means showing an increasing ability to work at levels that will reduce or eliminate dependence on SSDI and/or SSI benefits.

One avenue for moving toward self-supporting employment is getting training for this employment. While there are jobs for which training can be completed in a relatively short time period, there are others requiring a longer period of education or training. An individual in a certified educational/training program, internship, apprenticeship, etc. should not be required to interrupt this program to meet the work requirements of “timely progress.”

The Panel recommends individualizing “timely progress” based on the terms and conditions of the Individualized Plan for Employment/Individual Work Plan and placing the responsibility of proof and reporting on the EN with oversight by the Program Manager.

Evidence Requirements for EN Payment

One of the major disincentives for ENs to participate in the Ticket Program is the requirement to document earnings of a ticket holder in order to receive outcome or milestone payments. The current approach results in serious privacy problems from the beneficiary’s perspective. As recommended in the Panel’s 2004 report, Congress should “... immediately direct the Commissioner to change the EN payment claims process so that once a beneficiary has been certified as employed above the SGA level or leaves cash benefit status, the EN should continue to be paid monthly as long as the beneficiary remains in zero benefit status and the EN has not yet received 60 months of outcome payments or until the beneficiary requests a new EN. Moreover, the payment claims processing system should be refined to ensure timely payments to ENs within a businesslike time frame, such as 30 days.”

The Panel concurs with SSA’s example cited in the proposed amendments (reverse the timing of payments so that SSA would pay ENs based on a qualified presumption and do reconciliation when the earnings information is available to SSA, which might result in the EN repaying monies not due). Another recommended option, which is consistent with the requirement of beneficiaries to report earnings to SSA, is to have SSA explore the feasibility of sharing these earnings reports with ENs. This would relieve the EN of having to request the earnings information directly from beneficiaries.

Paying Phase I Milestones After VR Reimbursement

The Panel believes that there are legitimate circumstances wherein SSA may want to pay both Phase 1 and Phase 2 milestones to an EN for beneficiaries after SSA has paid the State VR agency under the cost reimbursement system. These circumstances include changing labor market or disability conditions leading to unsteady or interrupted employment.

If the EN offers services to the beneficiary leading to job placement consistent with their new circumstances, the Panel recommends that the EN be paid a Phase 1 payment. If SSA adopts the Panel’s previous recommendation of allowing, for good cause, more than one ticket during a period of disability, this would mitigate many of the inherent problems of coordinating payments under these two programs.

IV. CLOSING REMARKS

In closing, we add a few more points. First, we note that the proposed new rules will require additional training of ENs, VR, and beneficiaries. As in the past, the Panel urges SSA to be sure the necessary measures are in place to educate all appropriate parties of the changes and how they work.

Second, the Panel wants to recommend that SSA clarify that these proposed rule changes apply for both “new” and “old” tickets (prior tickets assigned to an EN). In addition, the Panel recommends that SSA implement appropriate measures to transition the “old” tickets to the new rules, to avoid unnecessary complexity and potential difficulties.

Finally, the Panel applauds SSA for proposing significant improvements in the Ticket Program regulations. We urge expeditious implementation of these new rule changes to help reignite the level of interest in the Ticket Program by ENs and beneficiaries. The Panel will closely track how the Final Rules will affect enrollment in the program.

We are pleased to have the opportunity to offer SSA this advice. If you have any questions, please contact the Panel’s Executive Director, Jill Houghton. She can be reached at 202-358-6419.

Sincerely,

A handwritten signature in black ink, appearing to read "Berthy De La Rosa-Aponte".

Berthy De La Rosa-Aponte
Chair
Ticket to Work and Work Incentives Advisory Panel